SPECIAL BOARD OF ADJUSTMENT NO. 947

Case No. 127
Award No. 127

Claimant: H. S. Bencomo

PARTIES TO DISPUTE: Brotherhood of Maintenance of Way Employees and Southern Pacific Transportation Company

STATEMENT OF CLAIM:

1. That the Carrier's decision to suspend Claimant from its service for a period of five (5) working days was excessive, unduly harsh and in abuse of discretion and in violation of the terms and provisions of the Collective Bargaining Agreement.

2. That because of the Carrier"s failure to prove and support the charges by introduction of substantial bona fide evidence, that Carrier now be required to reinstate and compensate Claimant for any and all loss of earnings suffered, and that the charges be removed from his record.

FINDINGS

Upon reviewing the record, as submitted, I find that the Parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Special Board of Adjustment id duly constituted and has jurisdiction of the Parties and the subject matter; with this arbitrator being sole signatory.

By letter dated September 16, 1991, the Claimant received a letter advising him to appear at a formal investigation to be held at the Office of the Superintendent, Tucson, Arizona, beginning at 9;00 a.m.. The purpose of the hearing was to determine whether or not he was responsible for violating Rules 607 and 609 of the Rules and Regulations for the Government of Maintenance of Way and Structures and Engineering Department Employees, Southern Pacific Transportation Company. The applicable portion of the cited rules read as follows:

> Rule 607: CONDUCT; Employees must not be;
> (4) Dishonest. . . .
> Any act of. . .misconduct. . .affecting the interests of the Company is sufficient cause for dismissal. . .
>
> Rule 609: CARE OF PROPERTY: . . .Employees

must not appropriate railroad property for their personal use.

Following the Investigation, the Carrier reviewed the evidence presented at hearing and determined the Claimant had violated the rules as cited. He was suspended for five (5) working days.

On the day the alleged rule violations took place the Claimant had been asked by his Track Supervisor if he would like to earn some extra money by working two hours after work to repair the track in the siding belonging to one of the companies which used the Carrier to transport materials. He, along with three other employees, did the work. He was paid $50.00.

The evidence produced at hearing showed that Carrier employees had originally begun work on the siding during working hours, but, subsequently were informed it was not the responsibility of the Carrier, but instead had to be repaired at the expense of the customer. At that point, the crew was pulled off the job and the customer eventually contracted with a Carrier Foreman and Track Supervisor to complete the work. As described above, the task was completed after working hours. However, there does seem to be sufficient evidence based on the early interviews with the Track Supervisor and Foreman, that there was at least some use of Company equipment in completing the repairs. Beyond that, the work was not completed with the kind of expertise the Carrier would expect from its employees. As a result, the Employees were charged with the aforementioned rule violations.

This Board does not believe there is sufficient proof to hold the Claimant responsible for either misconduct or the misappropriation of Company materials for his personal use. While the initial explanation of the event provided by the Track Supervisor seemed to indicate some Carrier claw bars and spike mauls were used by the Employees, it is equally true, the evidence suggests the equipment was there when the Claimant arrived. It is also apparent that the incident was governed by the Foreman and the Track Supervisor. Considering the employment status of those involved, it was reasonable for the Claimant to assume the Supervisors were acting appropriately in arranging to have the work performed with the equipment at hand. Therefore, this Board does not believe the Claimant is guilty of the cited rule violations.

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AWARD

The charges against the Claimant are to be dismissed. He is to be reimbursed for any wages and other benefits lost as a result of his five (5) working day suspension. His record is to be cleared and his seniority is to be unimpaired.

Carol J. Zamperini
Neutral

Submitted:

May 12, 1992
Denver, Colorado